

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

In Re: Tammy L. Henry	)	
	)	Case No.: <u>11-14274-BFK</u>
Debtor.	)	Chapter 7
	)	
Michael F. Thomson	)	
	)	
Plaintiff,	)	
	)	
v.	)	AP No. <u>11-01530-BFK</u>
	)	
Tammy L. Henry	)	
	)	
Defendant.	)	
	)	

**JUDGMENT**

THIS MATTER CAME ON REGULARLY FOR TRIAL on September 13, 2012. Plaintiff Michael F. Thomson, appeared in person and by counsel, Nathan Dee Baney, Esquire, of Redmon, Peyton & Braswell, LLP. Defendant, Tammy L. Henry, appeared in person and by counsel, Scott A. Weible, Esquire, of Scott Alan Weible, P.L.L.C..

THE COURT heard the testimony (both direct and cross-examination) of Plaintiff, and of Defendant, admitted proffered exhibits into evidence, and heard the argument of counsel.

UPON CONSIDERATION of the pleadings herein, the testimony of the parties, the exhibits admitted, the argument of counsel, and the law applicable to the matters plead and tried herein, the Court announced its decisions in open court. It is, therefore, hereby

FOUND AND DETERMINED that

- 1.) On November 11, 2008, Plaintiff and Defendant entered into a Marital Settlement Agreement (“MARITAL SETTLEMENT AGREEMENT”);
- 2.) On March 19, 2009, the Circuit Court of Fauquier County, Virginia, entered its Final Decree of Divorce in that case entitled Tammy Harlow Thomson v. Michael Francis Thomson, Circuit Court of Fauquier County, Case No. CL 0800072-00 (“FINAL DECREE”), thereby dissolving Defendant’s marriage to Plaintiff;
- 3.) That, by virtue of and under said MARITAL SETTLEMENT AGREEMENT and said FINAL DECREE, as of the date of the filing of Defendant’s chapter 7 petition herein on June 8, 2011, Plaintiff had no right to, or expectation of receiving, “spousal support” from Defendant as the quoted phrase is used in 11 U.S.C. § 523(a)(5), whether under said MARITAL SETTLEMENT AGREEMENT, said FINAL DECREE or otherwise;
- 4.) That, by virtue of and under said MARITAL SETTLEMENT AGREEMENT and said FINAL DECREE, as of the date of the filing of Defendant’s chapter 7 petition herein on June 8, 2011, under 11 U.S.C. § 523(a)(15),
  - a. Defendant was indebted to Plaintiff under the terms and conditions of that “Promissory Note” dated February 11, 2009, in that Defendant personally guaranteed the repayment of certain monies to Plaintiff, on certain conditions and subject to certain defenses; and
  - b. Defendant agreed to exonerate Plaintiff against all indebtedness of the corporation (then owned by Plaintiff and Defendant and named “Matt’s Ace

Hardware, Inc.”) to Wells Fargo Bank, Aides Discount Store, Inc. and Advanta BankCorp as of November 11, 2008; and

- c. Defendant agreed to pay a portion of certain non-corporate personal joint-indebtedness which Defendant and Plaintiff owed to Bank of America on that credit card ending in 0055 as of November 11, 2008; and
- d. Plaintiff and Defendant agreed that each party shall be responsible for his or her own attorneys fees, except for the successful prosecution or defense of an enforcement proceeding under the MARITAL SETTLEMENT AGREEMENT.

And, it is, hereby

ORDERED, ADJUDGED AND DECREED that

Count I - 11 U.S.C. § 523(a)(5)

1.) The claims of Plaintiff against Defendant, that Defendant was indebted to Plaintiff under the terms and conditions of that “Promissory Note” dated February 11, 2009, on the ground that Defendant personally guaranteed the repayment of certain monies to Plaintiff, on certain conditions and subject to certain defenses are ***not*** made non-dischargeable by 11 U.S.C. § 523(a)(5); and

2.) The claims of Plaintiff against Defendant, that Defendant agreed to exonerate Plaintiff against all indebtedness of the corporation (then owned by Plaintiff and Defendant and named “Matt’s Ace Hardware, Inc.”) to Wells Fargo Bank, Aides Discount Store, Inc. and

Advanta BankCorp as of November 11, 2008, are not made non-dischargeable by 11 U.S.C. § 523(a)(5); and

3.) The claim of Plaintiff against Defendant that Defendant agreed to pay a portion of certain non-corporate personal joint-indebtedness which Defendant and Plaintiff then owed to Bank of America on that credit card ending in 0055 as of November 11, 2008, is not made non-dischargeable by 11 U.S.C. § 523(a)(5); and

Count II - 11 U.S.C. § 523(a)(15)

4.) The claims of Plaintiff against Defendant that Defendant was indebted to Plaintiff under the terms and conditions of that “Promissory Note” dated February 11, 2009, on the ground that Defendant personally guaranteed the repayment of certain monies to Plaintiff, on certain conditions and subject to certain defenses are made non-dischargeable by 11 U.S.C. § 523(a)(15); and

5.) The claims of Plaintiff against Defendant that Defendant agreed to exonerate Plaintiff against all indebtedness of the corporation [Matt’s Ace Hardware, Inc.] to Wells Fargo Bank, Aides Discount Store, Inc. and Advanta BankCorp as of November 11, 2008, are made non-dischargeable by 11 U.S.C. § 523(a)(15); and

6.) The claims of Plaintiff against Defendant that Defendant agreed to pay a portion of certain non-corporate personal joint-indebtedness which Defendant and Plaintiff owed to Bank of America on that credit card ending in 0055 as of November 11, 2008, is made non-dischargeable by 11 U.S.C. § 523(a)(15); and

Count III – Attorneys Fees & Costs

7.) Attorneys fees and costs of suit shall be awarded pursuant the Plaintiff's and Defendant's agreement for such an award in connection with the successful prosecution or defense of an enforcement proceeding under the MARITAL SETTLEMENT AGREEMENT. Any motion to recover such fees and costs shall be filed no later than September 23, 2012, notwithstanding the 14-day time period set forth in F.R.C.P. Rule 54(d)(2)(B)(i). Objections to recovery of fees or costs shall be filed no later than October 3, 2012. The Court will rule upon any such motion and objections without a hearing. Pursuant to F.R.C.P. Rule 59(e), this Court shall retain jurisdiction, and this Judgment shall not become a Final Appealable Judgment or Order or Judgment under Federal Rule of Appellate Procedure 4(a)(4) until the determination of said motion for attorneys fees or costs is determined, and such motion for attorneys fees or costs shall be deemed to be a timely motion under F.R.C.P. Rule 59.

Dated: \_\_\_\_\_

Alexandria, Virginia

\_\_\_\_\_  
Brian F. Kenney  
United States Bankruptcy Judge

I ASK FOR THIS

/s/ Scott A. Weible, Esq.  
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***Counsel to Defendant Tammy L. Henry***

SEEN AND AGREED

/s/ Nathan D. Baney, Esq.

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***Counsel to Plaintiff***

CERTIFICATE OF SERVICE

I hereby certify that I have, this 21<sup>st</sup> day of September, 2012, caused to be served the foregoing proposed JUDGMENT on Counsel for Plaintiff, Nathan D. Baney, Esquire, Redmon, Peyton & Braswell, LLP, 510 King Street, Ste 310, Alexandria, Virginia 22314, nbaney@rpb-law.com, via email and via first class United States mail postage pre-paid, and upon Defendant Tammy L. Henry by email.

/s/ Scott A. Weible